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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,816	03/19/2004	Charles Jacob	21650	7076

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EXAMINER

LE, MARK T

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/804,816

Applicant(s)

JACOB, CHARLES

Examiner

Mark T. Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8, 11-15 and 17 is/are rejected.
- 7) ☒ Claim(s) 5, 7, 9, 10, 16, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/1/04</u> . | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration.

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

2. At the end of claim 9, a period is required.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Masse (US 5,103,740).

Masse discloses a railcar moving vehicle having all the features recited in the instant claims, including movable a weight that is the cargo to be placed on cargo bed 14, and a load shifting mechanism being in the form of crane 18; wherein, the crane or load shifting mechanism is inherently capable of shifting or moving the weight or cargo to different forward and rearward positions on cargo bed 14, during railway and roadway operations, as in the manner of intended uses recited in the last paragraphs of claim 1 and claim 12.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-4, 6, 8, 11, 13-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masse (US 5,103,740).

Masse is applied above.

Regarding the instant claimed weights and/or relative weights of the weight and the vehicle, as recited in claims 2-4 and 13-15, it is noted that Masse does not disclose the specific weights of the cargo and the vehicle; however, it is noted that the size and weight of a cargo carrying vehicle are generally proportional to the cargo carrying capacity of the vehicle, i.e. larger and heavier vehicles are generally capable of carrying larger and heavier cargos. Accordingly, it would have been obvious to one skilled in the art to construct the vehicle of Masse in such a size and weight, e.g. as claimed, so as to achieve a desired cargo carrying capacity, e.g. as claimed. As to the instant claimed weight of the movable weight, it would have been obvious to one skilled in the art to place a desired amount of cargo weight on the vehicle of Masse up to the maximum load carrying capacity thereof; wherein, the maximum load carrying capacity of the vehicle of Masse is defined by the size and weight of the vehicle and the materials used in forming the framing of the vehicle.

Regarding the travel distance of the load-shifting mechanism, as recited in instant claims 6 and 17, note that for a large cargo bed of 10 or more feet, the load handling crane thereon, such as the type of vehicle of Masse, is inherently required to be capable of a travel distance of at least 6 ft so as to enable an effective handling of the cargo thereon. According, when the cargo bed of Masse is constructed with a length of 10 or more feet, it would have been obvious to one skilled in the art to configure the crane with a travel distance of at least 6ft so as to effectively handling cargos thereon.

Regarding the instant claimed weight being metal plates affixed together in a single mass, as recited in instant claim 8, note that (official notice is taken) conventional metal plates in the form of a stock material that are stacked together at one location, such as a steel mill, and then transported to another location, such as a fabrication plant, for further processing would require some forms of transporting vehicles for transporting the stacked metal plates; therefore, it would have been obvious to one skilled in the art to use the vehicle of Masse as a transporting vehicle to transport such stack of metal plates as a cargo or weight on cargo bed 14 of Masse.

Regarding the instant claimed number of drive wheels and drive axles, as recited in instant claim 11, it is noted that in Figure 3 of Masse, there are only two drive axles for the rubber-tire wheels; however, as an obvious matter of providing duplicate parts for multiplied effects, it would have been obvious to one skilled in the art to provide additional rubber-tire wheels on an additional axle on the vehicle of Masse so as to increase traction and load carrying capacity of the vehicle.

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7. Claims 5, 7, 9-10, 16 and 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 20 is allowable.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should further consider the structures of Krueger, Kleinknecht, and Locke.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 703-308-3663. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le  
Primary Examiner  
Art Unit 3617

mle  
1/30/05